

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF CHESAPEAKE UTILITIES CORPORATION)
REGARDING ITS ACQUISITION AND) PSC DOCKET NO. 18-0933
CONVERSION OF PROPANE GAS SYSTEMS)
(Filed June 29, 2018))

ORDER NO. 9297

AND NOW, this 29th day of November, 2018, the Delaware Public Service Commission (the "Commission") having considered the Motion of the Delaware Division of the Public Advocate ("DPA") and the Delaware Public Service Commission Staff ("Staff") to Dismiss the Application of Chesapeake Utilities Corporation Regarding Its Acquisition and Conversion of Propane Gas Systems (the "Motion"); and the Commission having reviewed the response of Chesapeake Utilities Corporation ("Chesapeake") to the Motion; and the Commission having heard oral argument from the parties, and public comment from the non-parties the Delaware Association of Alternative Energy Providers, the Mid-Atlantic Propane Gas Association, and the Mid-Atlantic Petroleum Distributors Association, at its regularly-scheduled meeting on November 8, 2018;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO
FEWER THAN THREE COMMISSIONERS, THAT:**

1. The Motion is **GRANTED**.
2. The Commission finds that it lacks jurisdiction over the sale and delivery of propane, even if that sale and delivery is made by a utility that is otherwise regulated by the Commission. The Public Utilities Act ("Act") does not define entities engaging in the sale and

delivery of propane as "public utilities."¹ The Act provides that this Commission has exclusive original supervision and regulation only over public utilities and their rates, property rights, equipment, facilities, service territories and franchises. Notwithstanding that we exercise exclusive original supervision and regulation over Chesapeake as a public utility because it provides natural gas for public use, that exclusive original supervision and regulation does not extend to Chesapeake's proposed propane rates, property rights, equipment and facilities because the General Assembly has not seen fit to define propane as a public utility. Nor may we interpret our statutory authority to exceed that which the General Assembly has delegated to us. We are bound by the clear language of Sections 102(2) and 201(a) of the Act, which together preclude us from regulating the sale and distribution of propane, even if those activities are carried out by an otherwise-regulated public utility.

3. The Commission acknowledges Chesapeake's arguments that various policymakers have encouraged the expansion of natural gas to underserved areas in Delaware; that studies have purported to demonstrate the benefits that would accrue to Delaware with such expansion; that in 2014 the General Assembly issued, and Governor Markell signed, Senate Joint Resolution No. 7 directing certain state agencies to take the lead to work with private sector providers to develop a plan for implementing a natural gas pipeline extension from New Castle County; and that, as a condition of approving Exelon Corporation's merger with Pepco Holdings,

¹ 26 Del. C. §102(2).

Inc., we instructed Exelon to conduct a study regarding the expansion of natural gas infrastructure into lower Delaware. Unfortunately for Chesapeake, none of those arguments can overcome the General Assembly's limitation of our exclusive original supervision and regulation to public utilities. Propane is clearly not a public utility, and we would exceed our legislatively-granted authority were we to find that we could regulate Chesapeake's sale and delivery of propane to eventual new natural gas customers.

4. Chesapeake's Application is hereby **DISMISSED**.² The Secretary is instructed to close Docket No. 18-0933.

5. The Commission retains jurisdiction and authority to enter such further orders in this docket as may be deemed just and reasonable.

BY ORDER OF THE COMMISSION:

Chairman

Commissioner

Commissioner

² The Commission's decision to dismiss Chesapeake's Application renders moot the Petition of the Delaware Association of Alternative Energy Providers, the Mid-Atlantic Propane Gas Association, and the Mid-Atlantic Petroleum Distributors Association for leave to intervene in this matter.

Commissioner

Commissioner

ATTEST:

Secretary